



Virginia Capital Access Program

BANK PARTICIPATION AGREEMENT

This BANK PARTICIPATION AGREEMENT (the "Agreement") is entered into this ____ day of _____, 20__, by and between the Virginia Small Business Financing Authority (VSBFA), a public body corporate and a political subdivision of the Commonwealth of Virginia, whose address is P. O. Box 446, Richmond, Virginia 23218-0446, and _____ whose address is _____ (the "Bank").

RECITALS

WHEREAS, VSBFA was created by the Virginia Small Business Financing Act, Section 9-197 et seq. of the Code of Virginia, as amended, (the "Act") to provide financial programs for endeavors relating to industrial and commercial enterprise; and

WHEREAS, VSBFA has determined that in order to promote economic development and help create jobs for the citizens of the Commonwealth of Virginia, there is a crucial need to assist in providing access to capital for Virginia businesses that otherwise might not be able to obtain such access; and

WHEREAS, VSBFA has determined that establishing a reserve fund to cover a portion of potential losses a bank may incur in the event of borrower default will promote and serve the intended purposes of and in all respects will conform to the provisions and requirements of the Act; and

WHEREAS, VSBFA and the Bank desire to set forth the terms and conditions of the loan loss reserve fund that will apply if the Bank decides to make loans under the Virginia Capital Access Program.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

ARTICLE I

DEFINITIONS

In addition to the words and terms defined elsewhere in this Agreement, each of the following words and terms as used in this Agreement shall have the following meaning, unless the context or use clearly indicates another or different meaning or intent, and such definition shall be equally applicable to both the singular and plural forms of the terms as the content may require:

"Affiliate," when describing a relationship with the Bank, means any one or more bank subsidiaries (other than the Bank) of the Bank's parent corporation and its successors.

“Borrower” means the recipient of a loan, which is, has been, or will be filed by the Bank for enrollment under the Virginia Capital Access Program (VCAP).

“Claim” means any claim filed by the Bank pursuant to Section 5.3.

“Covered Amount” or “Amount Covered” means that portion of the Enrolled Loan that premium deposits have been calculated on, collected from the borrower/bank and VSBFA, and subsequently deposited into the Reserve Fund.

“Eligible Loan” means a loan made by the Bank to a Borrower for which the representations and warranties as set forth in Section 2.2 are true.

“Enrolled Loan” means a loan enrolled by the Bank pursuant to the terms of Article IV hereof.

“Maximum Enrolled Loan Amount” means the maximum aggregate outstanding amount of \$250,000 for any Enrolled Loan or Loans to a single Borrower or any common enterprise in which the Borrower has an ownership interest.

“Maximum Enrolled Loan Term” means a term not to exceed 10 years. Although the Bank may have a longer note maturity and amortization period, the maximum term the loan is covered under the VCAP is 10 years from the date of enrollment.

“Passive Real Estate Ownership” means ownership of real estate for the purpose of deriving income from speculation, trade or rental, except that such term shall not include: (a) the ownership of that portion of real estate being used or intended to be used for the operation of the business of the owner of the real estate; or (b) ownership of real estate for the purpose of construction or renovation, until the completion of the construction or renovation phase.

“Program” means the Virginia Capital Access Program (VCAP) established by VSBFA.

“Reserve Fund” means an administrative account maintained by VSBFA at the Bank to hold funds accumulated pursuant to this Agreement to cover losses sustained by the Bank on Enrolled Loans, as more specifically set forth in Article III.

ARTICLE II

REPRESENTATIONS

Section 2.1. Representations by VSBFA. With respect to any loan enrolled hereunder, VSBFA makes the following representations and warranties as of the time of such enrollment:

- (a) VSBFA is a public body corporate and political subdivision established and acting pursuant to the Act.
- (b) VSBFA has the necessary power under the Act, and has duly taken all action on its part required to authorize, execute and deliver this Agreement. This Agreement when executed will be valid, binding and enforceable in accordance with its terms. The execution and performance of this Agreement by VSBFA will not violate or conflict with any instrument by which VSBFA is bound.

Section 2.2. Representations by the Bank. With respect to any loan that the Bank files for enrollment hereunder, the Bank makes the following representations and warranties as of the time of each such filing:

(a) The Bank has obtained from the Borrower the following representations and warranties, and, based on knowledge that the Bank has after reasonable inquiry, the Bank has no substantial reason to believe that such representations and warranties are not true:

- (i) The Borrower is a corporation, partnership, limited liability corporation, limited liability partnership, joint venture, sole proprietorship, cooperative, or other entity, whether profit or non-profit, which is authorized to conduct business in the Commonwealth of Virginia, and the proceeds of the loan will be used for an endeavor related to industrial, commercial or other business enterprise, or any combination thereof, within the Commonwealth of Virginia.
- (ii) The loan will not be used for endeavors related to residential housing.
- (iii) The loan will not be used to finance Passive Real Estate Ownership.
- (iv) No officer, director, or shareholder is an executive officer, director, or principal shareholder of the Bank, or a member of the immediate family of an executive officer, director or principal shareholder of the Bank, or a related interest of any such executive officer, director, principal shareholder or member of the immediate family. For the purposes of this provision, the terms “executive officer”, “director”, “principal shareholder”, “immediate family”, and “related interest” shall refer to the same relationship to the Bank, whether or not the Bank is a member bank, as the relationship specified for those terms in connection with member banks in Part 215 of Title 12 of the Code of Federal Regulations, including amendments of such Part 215 which may be made from time to time.
- (v) That the enrollment of the loan by the Bank will not violate the Maximum Enrolled Loan Amount.

(b) The Bank further represents and warrants as follows:

- (i) That the Bank has received from the Borrower a written representation, warranty, pledge and waiver in the form as set forth in VCAP Borrower’s Certification Form attached hereto, or such modified exhibit as may be specified by VSBFA, stating that the Borrower has no legal, beneficial or equitable interest in the non-refundable fee or any other funds credited to the Reserve Fund established to cover losses sustained by the Bank on Enrolled Loans.
- (ii) That the Bank has disclosed to the Borrower information concerning the Program as set forth in VCAP Borrower’s Certification Form attached hereto, or such modified exhibit as may be specified by VSBFA.
- (iii) That the Bank has complied or will comply with all federal and state laws, rules and regulations pertaining to the making of the loan.

ARTICLE III

ESTABLISHMENT OF THE RESERVE FUND

Upon execution of this Agreement, VSBFA shall establish an administrative account at the Bank in the name of VSBFA for the purpose of receiving all required fee charges to be paid by the Bank and the Borrower, and transfers made by VSBFA, pursuant to the terms of Section 5.1 hereof. The account shall be called the VSBFA Reserve Fund – “Bank” (the “Reserve Fund”). The Reserve Fund account shall be interest bearing in accordance with accounts of this type, and the Bank may not charge VSBFA for any fees related to VCAP loan transactions or for the maintenance of the Reserve Fund account. *The Reserve Fund accounts are public deposits pursuant to the Security for Public Deposits Act and must be indicated as such on the bank records. The bank is subject to the collateralization and reporting requirements of the Act.*

ARTICLE IV

ENROLLMENT OF LOANS IN PROGRAM

Section 4.1. Loans. A loan to be filed for enrollment under this Agreement may be made with such interest rate, fees, and other terms and conditions as the Bank and Borrower may agree. The loan may be in the form of a line of credit, in which case the amount of the loan shall be considered to be the maximum amount that can be drawn down against the line of credit.

Section 4.2. Enrollment.

(a) In order to enroll a loan under the Program, the Bank shall file the loan for enrollment by causing to be delivered to VSBFA the following:

(i) A copy of the VCAP Loan Enrollment Form attached hereto in completed form, or such modified form as may be specified by VSBFA, bearing an execution signature of an authorized officer of the Bank.

(ii) Transmittal of evidence that the fees payable by the Bank and the Borrower in connection with the loan as set forth in Section 5.1 have been deposited into the Reserve Fund, or evidence that such transmittal has occurred, in accordance with procedures specified by VSBFA.

(b) The Bank shall file the loan for enrollment within five (5) business days after the Bank makes the loan. For the purposes of this Agreement, the date on which the Bank makes a loan shall be deemed to be the date on which the Bank first disburses proceeds of the loan to the Borrower, or such earlier date on which the loan documents have been executed and delivered to the Bank. For the purposes of this Agreement, the filing of a loan for enrollment shall be deemed to occur on the date on which the Bank delivers to VSBFA, delivers to a professional courier service for delivery to VSBFA, or mails to VSBFA, the documentation and fees required by this Section.

Section 4.3. Acknowledgment. Upon receipt by VSBFA of the documentation and fees identified in Section 4.2 hereof, VSBFA shall enroll the loan, unless the information provided pursuant to Section 4.2 indicates that the loan is not an Eligible Loan, and shall mail or otherwise deliver to the Bank, within five (5) business days of such receipt, an acknowledgment of enrollment, bearing the execution signature of an authorized representative of VSBFA, and including documentation of the amount being transferred by VSBFA into the Reserve Fund pursuant to Section 5.1. Notwithstanding the provisions of this Section 4.3, VSBFA is under no obligation to accept loans for enrollment in the Program if VSBFA does not have sufficient funds to make the necessary transfer of fees under Section 5.1 of this Agreement.

Section 4.4. Portions of Loans. When filing a loan for enrollment, the Bank may specify an amount to be covered under the Program that is less than the total amount of the loan. Unless the context clearly requires otherwise, when used in this Agreement in connection with a loan or loans, the words "amount and proceeds" shall refer only to the amount covered under this Agreement.

Section 4.5. Refinancing of Enrolled Loans. In the event that an Enrolled Loan is refinanced, and the total amount to be covered under the Program does not exceed the covered amount of the loan as previously enrolled, the loan, as refinanced, may continue as an Enrolled Loan, and there shall be no additional fees payable, or transfers to be made by VSBFA, into the Reserve Fund.

Section 4.6. Refinancing and Increase of Enrolled Loans. In the event that an Enrolled Loan is refinanced in an amount that exceeds the amount covered when the loan was previously enrolled,

(a) the Bank shall again file the loan for enrollment pursuant to Section 4.2 with payments and transfers to be made into the Reserve Fund based on the amount to be covered that is in excess of the previously covered amount.

(b) the Bank at the time of such refinancing shall be deemed to have made, with respect to such refinanced loan, the representations and warranties specified for the Bank in Section 2.2(a) and Section 2.2(b) hereof.

Section 4.7. Enrolled Term Loans. The Bank may have a longer note maturity and amortization period, but the maximum term the loan is covered under VCAP is ten years from the date of enrollment. In any event, maturities should match the Borrower's ability to repay, and the life of the asset purchased.

Section 4.8. Line of Credit Fluctuations. For the purposes of this Agreement, fluctuations in the outstanding balance of a line of credit, without increasing the covered amount under the Program, shall not be deemed to be a refinancing of the loan.

Section 4.9. Zero Balances. If the outstanding balance of an Enrolled Loan which is not a line of credit is reduced to zero, such loan shall no longer be considered an Enrolled Loan. If an Enrolled Loan which is a line of credit has an outstanding balance of zero for a three (3) month period, such line of credit shall no longer be considered an Enrolled Loan, unless before the expiration of the three (3) month period the Bank has reaffirmed in writing to the Borrower that the line of credit will remain open, and the Borrower has acknowledged in writing such reaffirmation.

Section 4.10. Reporting Requirements.

(a) Bank is to submit to the VSBFA a monthly bank statement which reflects all activity under the Reserve Fund within 10 days of the preceding month-end.

(b) For each calendar quarter, the Bank is to submit to the VSBFA within 10 days of the quarter-end a report listing borrowers and outstanding balances of all Enrolled Loans as of the end of that preceding calendar quarter. In computing the aggregate outstanding balance of all Enrolled Loans, the balance of any loan shall in no event be considered to be greater than the covered amount of the loan as enrolled and, in the case of lines of credit, the outstanding balance shall be considered to be the full amount of the line covered.

ARTICLE V

USE OF THE RESERVE FUND

Section 5.1. Payments and Transfers to the Reserve Fund. The amount of the fees payable to the Reserve Fund by or on behalf of the Bank and the Borrower in connection with a loan being filed for enrollment with VSBFA pursuant to Section 4.2 shall be set by the Bank within the limits set forth in this Section. The amount paid by the Borrower shall not be less than 1.5% of the amount of the loan and shall not be greater than 3.5% of the amount of the loan. The amount paid by or on behalf of the Bank shall be equal to the amount paid by the Borrower. The Bank may recover, pass through to, or collect from the Borrower the cost of the Bank's payment. When a loan is enrolled pursuant to Article IV, VSBFA shall transfer into the Reserve Fund, from available funds that have been allocated by VSBFA to the Program, an amount at least equal to the combined amounts paid into the Reserve Fund by the Borrower and the Bank for each Enrolled Loan. However, for the first one million dollars of Enrolled Loans, VSBFA shall transfer into the Reserve Fund an amount equal to twice the combined amounts paid into the Reserve Fund by the Borrower and the Bank for each Enrolled Loan. And, for all Loans made to Technology Borrowers and enrolled by the Bank, VSBFA shall transfer into the Reserve Fund an amount equal to twice the combined amounts paid into the Reserve Fund by the Borrower and the Bank for each Enrolled Loan. A Technology Borrower shall be defined as a Virginia business, which derives over 50 percent of its revenues from the research, development, fabrication, manufacturing, or marketing of products and applications which use or embody technology.

Section 5.2. Ownership, Control and Investment of Reserve Fund.

(a) All funds credited to the Reserve Fund shall be solely controlled by VSBFA. VSBFA may not withdraw funds from the Reserve Fund except as is specifically provided for in this Agreement.

(b) Interest or income earned on the funds credited to the Reserve Fund shall be deemed to be part of the Reserve Fund. However, VSBFA is authorized to withdraw at any time from the Reserve fund fifty percent (50%) of all interest or income that has been credited to the Reserve Fund, except that subsequent to the first such withdrawal VSBFA may not withdraw more than fifty percent (50%) of all interest or income that has been credited to the Reserve Fund since the time of the last such withdrawal. Any withdrawal made pursuant to this paragraph may be made prior to paying any Claim under Section 5.4, and none of such amounts withdrawn shall be required to be transferred back to the Reserve Fund.

(c) The records of VSBFA with respect to all payments and transfers into the Reserve Fund, withdrawals from the Reserve Fund, and interest or income earned on the funds credited to the Reserve Fund, shall be available to the Bank for inspection at the offices of VSBFA during normal business hours.

Section 5.3. Claims by Bank on Reserve Fund.

(a) If the Bank, in a manner consistent with commercially reasonable and customary methods for making such determinations on business loans which are not Enrolled Loans, charges off all or part of an Enrolled Loan, the Bank may file a Claim with VSBFA by submitting a completed claim form in the form attached hereto, or such modified form as may be specified by VSBFA, bearing the execution signature of an authorized officer of the Bank. Any Claim that is filed hereunder shall be filed within 30 days of the action of the Bank to charge off all or part of the loan.

(b) Except as restricted in this paragraph, the Bank's Claim may include, in addition to the amount of principal charged off plus accrued interest, an amount which represents its reasonable out of pocket expenses incurred in pursuing its collection efforts, including preservation of collateral. The Bank shall retain documentation in its files evidencing all expenses for which a Claim is filed. The amount of principal in the Bank's Claim may not exceed the Covered Amount.

(c) The Bank, in a manner consistent with commercially reasonable and customary methods for making such determinations on business loans which are not Enrolled Loans, shall determine when and how much to charge off an Enrolled Loan.

(d) If the Bank files two (2) or more Claims contemporaneously, and if there are insufficient funds in the Reserve Fund at the time to cover the entire amounts of such Claims, the Bank may designate the order of priority in which VSBFA shall pay such Claims in accordance with Section 5.4.

Section 5.4. Disbursement of Reserve Fund.

(a) Notwithstanding the violation of any other provision of this Agreement by the Bank, upon receipt by VSBFA of a Claim filed by the Bank in accordance with Section 5.3, VSBFA shall promptly pay, from funds in the Reserve Fund, such Claim as submitted, except that VSBFA may reject a Claim when the representations and warranties provided by the Bank in Section 2.2 hereof were false at the time the loan was filed for enrollment, unless the Bank can demonstrate that it had no knowledge of such falsity. For purposes hereof, the knowledge of the Bank's employees and agents shall be deemed the knowledge of the Bank. No payment shall be due or payable to the Bank if there are no funds in the Reserve Fund at the time a Claim is made, even if funds are subsequently deposited into the Reserve Fund.

(b) If there are insufficient funds in the Reserve Fund to cover the entire amount of the Bank's Claim, VSBFA shall pay to the Bank an amount equal to the current balance in the Reserve Fund less any interest accruing to VSBFA pursuant to Section 5.2(b). Such payment shall be deemed to fully satisfy the Claim, and the Bank shall have no other or future right to receive any amount from the Reserve Fund with respect to such Claim.

(c) Neither the Commonwealth of Virginia nor VSBFA shall be obligated to pay any money to the Bank pursuant to this Agreement except from the money available for such purpose in the Reserve Fund created pursuant to this Agreement.

Section 5.5. Recovery by Bank Subsequent to Claim.

(a) If subsequent to payment of a Claim by VSBFA the Bank shall recover from a Borrower any amount for which payment of the Claim was made, the Bank shall promptly pay to VSBFA for deposit in the Reserve Fund such amount recovered, less any amount of recovery needed to fully cover the Bank's loss on the Enrolled Loan and for which the Claim was made and any out of pocket expenses incurred. The Bank shall retain documentation in its files evidencing any such expenses.

(b) For the purposes of this Section, the Bank's loss on an Enrolled Loan shall include any losses on the loan in an amount equal to the sum of the outstanding principal balance, plus accrued interest, plus reasonable, documented out of pocket collection expenses. "Out of pocket collection expenses" and "out of pocket expenses" shall not include any contingency fee payable by the Bank arising out of a payment to the Bank from funds in the "Reserve Fund."

ARTICLE VI

WITHDRAWAL OF EXCESS RESERVE FUNDS

Section 6.1. Bank Reports and VSBFA Right of Withdrawal. If the Bank's quarterly reports pursuant to Section 4.10 (b) indicate that for the immediately preceding twelve (12) month period the balance in the Reserve Fund at all times exceeded the aggregate outstanding balance of all Enrolled Loans, VSBFA may withdraw from the Reserve Fund, on or before the last day of the month in which a report is due, an amount not greater than the amount by which the Reserve Fund balance exceeds the aggregate outstanding balance of all Enrolled Loans as of the most recent report, unless the Bank can provide to VSBFA adequate documentation that at some time during

such twelve (12) month period, the aggregate outstanding balance of all Enrolled Loans exceeded the balance then in the Reserve Fund.

Section 6.2. Withdrawals After Report Dates.

(a) If VSBFA is entitled to withdraw funds from the Reserve Fund pursuant to Section 6.1, but the Bank's report pursuant to Section 4.10 (b), which report in combination with prior consecutive reports demonstrates VSBFA's right to withdraw, is not timely filed with VSBFA, VSBFA shall have fifteen (15) days from its actual receipt of such report to withdraw such funds.

(b) If such report is not filed within thirty (30) days of its original due date, VSBFA shall be entitled, pursuant to Section 6.1, to withdraw from the Reserve Fund, based on VSBFA's determination from an inspection of the Bank's files pursuant to Section 9.3, an amount not greater than the amount by which the Reserve Fund balance exceeds the aggregate outstanding balance of all Enrolled Loans as of the date for which such report was required to be filed.

ARTICLE VII

TERMINATION

Section 7.1. Enrollments. VSBFA may terminate its obligation under this Agreement with the Bank to enroll loans under the Program, at its sole discretion. Such termination shall be applicable on the effective date specified in the written notice of termination, except that such termination shall not apply to any loan which is made on or before the date on which the notice of termination is received by the Bank. However, if VSBFA is terminating the enrollment of loans not merely for the Bank but instead for all participating banks under the Program, VSBFA shall provide notice of at least sixty (60) days to the Bank. Any terminations under this Section shall be prospective only, and shall not apply to any loans previously enrolled under the Program, except that if a previously Enrolled Loan is refinanced, the amount covered under the Program shall not be increased beyond the covered amount as previously enrolled after the effective date of termination.

Section 7.2. Bank's Withdrawal from Program. The Bank may withdraw from the Program at any time with prior written notice to VSBFA. Such withdrawal shall be applicable on the effective date specified in the written notice of withdrawal, except that such withdrawal shall not apply to any loan which is made on or before the date on which the notice of withdrawal is received by VSBFA. Any withdrawals under this Section shall be prospective only, and shall not apply to any loans previously enrolled under the Program. Upon notification of the Bank's intention to withdraw from the Program, VSBFA reserves the right to immediately withdraw an amount not greater than the amount by which the Reserve Fund balance exceeds the aggregate outstanding balance of all Enrolled Loans as of the most recent report, until such time as the balance of the Reserve Fund is reduced to zero.

Section 7.3. Agreement. Subsequent to a termination pursuant to Section 7.1 or Section 7.2 hereof, if the balance of the Reserve Fund is reduced to zero, this Agreement shall automatically terminate, except that the Bank shall remain subject to Section 5.5.

ARTICLE VIII

PLEDGE OF THE RESERVE FUND

VSBFA hereby pledges the funds in the Reserve Fund to be available to pay Claims pursuant to Section 5.4. VSBFA further grants to the Bank a first security interest in the funds in the Reserve Fund to pay Claims pursuant to Section 5.4, and VSBFA will not encumber or pledge the funds to any other party. Nothing contained herein is intended to diminish the ownership or control of the Reserve Fund granted to VSBFA in Section 5.2, and

further, nothing contained herein shall affect the rights of VSBFA to withdraw funds from the Reserve Fund pursuant to Section 5.2(b), Section 6.1 and Section 6.2.

ARTICLE IX

MISCELLANEOUS

Section 9.1. Amendments of Agreement. VSBFA may, with at least forty-five (45) days' written notice to the Bank, amend in writing any provision of this Agreement. However, in the absence of the consent of the Bank, no such amendment shall be applicable to loans made prior to the effective date of the amendment, and no such amendment shall diminish the Bank's rights with respect to funds in the Reserve Fund.

Section 9.2. Information to VSBFA. The Bank shall provide VSBFA with such information regarding its participation in the Program as VSBFA may reasonably require.

Section 9.3. Inspection of Files. Upon notice to the Bank, VSBFA may inspect the files of the Bank relating to any loans enrolled under the Program, during normal business hours of the Bank.

Section 9.4. Compliance with Applicable Law. The Bank and VSBFA shall comply with all applicable federal and state laws, rules and regulations.

Section 9.5. Limitation of Rights. This Agreement shall be for the exclusive benefit of the Bank and VSBFA, and shall not be construed to give any person other than the parties hereto any legal or equitable right, remedy or claim under or in respect to this Agreement.

Section 9.6. Severability. If any clause, provision or section of this Agreement is held illegal or invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining clauses, provisions or sections hereof, and this Agreement shall be construed and enforced as if such illegal or invalid clause, provision or section had not been contained herein.

Section 9.7. Notices. All notices, certificates, requests or other communications hereunder (other than Exhibits and Reports referred to herein, which may be sent via regular mail) shall be sufficiently given when delivered by messenger, by professional courier service or by registered or certified mail postage prepaid, return receipt requested, addressed as follows:

- (a) If to VSBFA by mail:
Virginia Small Business Financing Authority
P.O. Box 446
Richmond, VA 23218-0446
Attention: Virginia Capital Access Program

If to VSBFA by messenger or professional courier service:
Virginia Small Business Financing Authority
707 E. Main Street, Suite 300
Richmond, VA 23219
Attention: Virginia Capital Access Program

(b) If to the Bank by mail:

If to the Bank by messenger or professional courier service:

Section 9.8. Binding Effect. This agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

Section 9.9. No Personal Liability. No member, officer or employee of VSBFA or the Bank, including any person executing this Agreement, shall be liable personally under this Agreement or subject to any personal liability for any reason relating to the execution of this Agreement or the Program.

Section 9.10. Collateral. VSBFA shall have no legal or equitable interest in any collateral, security, or other right of recovery in connection with any loan enrolled in the Program, and therefore VSBFA's consent is not necessary for any amendment to the Bank's loan documents. This Section shall not be construed to modify any obligation of the Bank to make repayments to the Reserve Fund pursuant to Section 5.5.

Section 9.11. Collection of Loans. The Bank agrees to collect loans enrolled under the Program in a manner consistent with commercially reasonable and customary standards of collecting business loans not enrolled in the Program.

Section 9.12. Captions. The captions in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 9.13. Interpretation Jurisdiction, and Venue. This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Virginia. The parties agree that jurisdiction shall be solely in the courts of the Commonwealth of Virginia and that venue shall be solely in the Circuit Court for the City of Richmond, Virginia.

Section 9.14. Integration. This Agreement is fully integrated and embodies the entire agreement between the parties.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective duly authorized officers as of the date first set out above.

Virginia Small Business Financing Authority

By: _____
Scott Parsons

Its: Executive Director

Bank: _____ Tax I.D. Number: _____

By: _____
Banking Officer

Its: _____

VCAP Borrower Certification Form

Notice to Borrower

This notice is provided to Borrowers who may receive a loan which has been enrolled in the Virginia Capital Access Program of the Virginia Small Business Financing Authority.

- Purpose:** The purpose of the Virginia Capital Access Program (VCAP) is to assist banks in making loans to borrowers that might not otherwise qualify for a conventional bank loan.
- Reserve Fund:** The program uses a Reserve Fund to assist banks in recovering losses on a portfolio of loans that a bank makes under the program. A non-refundable fee (reserve contribution) paid into the Reserve Fund by the borrower/bank is matched by the Virginia Small Business Financing Authority. The borrower has no legal, beneficial or equitable interest in any reserve contributions made to the Reserve Fund. While the program is intended to assist banks in providing businesses with access to bank financing, loans enrolled through the VCAP program are usually more expensive for borrowers than would be the case with a conventional bank loan because of the additional risks.
- Parties:** A loan enrolled in the VCAP program is a private transaction between the bank and the borrower. The Virginia Small Business Financing Authority is not a party to the loans and plays no role in the bank's decisions (i.e., approving or declining the loan, setting the terms and conditions, or enforcing the bank's rights under the loan contract). The bank's rights and remedies are described in the loan contract and in law applicable to any bank financing.

Representations by Borrower

The borrower (the "Borrower") hereby acknowledges the foregoing and, with respect to the credit facility described below, the Borrower makes the following representations and warranties to (the bank) :

- Borrower:** The Borrower is a corporation, partnership, joint venture, limited liability company, limited liability partnership, sole proprietorship, cooperative, or other entity, which is authorized to conduct business in the Commonwealth of Virginia. The Borrower(s) is not an executive officer, a director, or a principal shareholder of (the bank) , nor has a related interest in or is an immediate family member of an executive officer, director, or principal shareholder of (the bank) .
- Technology Borrowers:** The Borrower is a Virginia business which derives over fifty percent of its revenues from the research, development, fabrication, manufacturing, or marketing of products and applications which use or embody technology.
- Loan Enrollment:** The loan to the Borrower will be filed for enrollment by the bank in the Virginia Capital Access Program. As a condition of the Program enrollment, the Borrower is required to pay a non-refundable fee, which will be collected by the bank for transmittal into the Reserve Fund.
- Loan Purpose:** The loan proceeds will be used for business purposes within the Commonwealth of Virginia. They will not be used to finance housing or passive real estate ownership, which means the ownership of real estate for the purpose of deriving income from speculation, trade, or rental. It does not mean: 1) ownership of real estate being used or intended to be used for the Borrower's business operation, or 2) ownership of real estate for the purpose of construction or renovation during the construction or renovation phase.
- Waiver:** The Borrower hereby waives any right, claim or interest to any and all such funds paid or credited to the Reserve Fund from time to time.

(Borrower's Name)

By: _____

Title: _____

Date: _____

Credit Facility:

Note Date:	Account or Taxpayer ID No.:
Note Amount:	Covered Amount:
Other Outstanding Note(s) Amts. Covered, if applicable:	No. Jobs Created with Loan:
	No. Jobs Saved with Loan:

VCAP Loan Enrollment Form

Lender Information

Participating Bank	Bank ID No.
Authorized By	Phone No. Fax. No.
Loan Officer	Phone No. Fax. No.
Officer's Address	Date Submitted

Borrower Information

Applicant Name <i>(Please include DBA)</i>		
Complete Address <i>(Please include the city or county in which the Borrower is located)</i>		
Type of Business <i>(Please be specific: eg . Veterinary Clinic, Dental Practice, etc.)</i>	Is this a Technology Company? Yes ____ No ____	Tax Identification Number
Current Annual Sales	Current Number of Employees	
Borrower's Estimate of New Jobs Created as a Result of this Loan _____		Borrower's Estimate of No. of Jobs Saved as the Result of this Loan: _____

The information requested below is voluntary and for statistical purposes only.

Gender of Majority Owner:

- ☐ Female
☐ Male

Race:

- ☐ White
☐ Black
☐ Native American
☐ Asian
☐ Hawaiian or Pacific Islander

Hispanic:

- ☐ Yes

Loan Information

Purpose		
Note Date	Maturity Date	Secured?
Customer No.	Note No.	Loan Type
Interest Rate (Please indicate) Fixed _____ Floating (please indicate index) _____		
Note Amt.	Covered Amt.	Amt. of Other Outstanding Enrolled Loans to Borrower:
<i>Complete the following fields if refinancing an enrolled VCAP loan:</i>	Enrolled Balance Prior to Refinance:	New Total Covered Amt.:

Reserve Information

Percentage:	Borrower:	Bank:	VSBFA:
Amount:	Borrower:	Bank:	VSBFA:

VSBFA Acceptance

% Borrower/Bank Payment _____ VSBFA Transfer Amount _____

Amount of Other Outstanding Enrolled Loans _____

☐ Verify Borrower/Bank Payment Received. ☐ Verify Copy of Enrollment Completed by VSBFA & Returned to Bank.

Virginia Small Business Financing Authority

By: _____

Date: _____

VCAP Claim Form

1. Name of Bank: _____
2. Name of Borrower: _____
3. Borrower Customer No./Note No.: _____
4. Original Covered Amount of Loan at Enrollment: _____
5. Outstanding Principal Balance of Loan: _____
6. Amount of Claim
 - a. Principal _____
 - b. Accrued Interest _____
 - c. Out of pocket expenses _____Total Amount of Claim _____

Authorized Signature _____

Name and Title _____

Date _____